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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,660

09/08/2003

Klaus-Hinrich Borchers

4568

1986

21553

7590

10/04/2005

FASSE PATENT ATTORNEYS, P.A.

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EXAMINER

LE, TAN

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/658,660

Applicant(s)

BORCHERS, KLAUS-HINRICH

Examiner

Tan Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the second office action for application serial number 10/10/658,660. This application contains 21 claims numbered 1-21. Claims 3 and 8-19 have been withdrawn.
2. Amendment to specification filed 7/21/05 has been entered.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 4,601,447 to McFarland.

MacFarland discloses a conduit spacer anchoring system comprising a plurality of guard hose arrangement (Fig. 3 for example), each guard hose (14) having an inner diameter, each guard hose of said plurality of guard hoses (in operational state) comprising an outwardly facing first contour and at least one spacer (13 for example) positioned between two neighboring guard hoses of the plurality of guard hoses, the at least one spacer having two second opposite contours, each second contour (22) matching one the first contour of the two neighboring guard hoses and wherein each of the second contours contacts a circumferential portion of a respective first contour to thereby partly encircle the respective first contour.

Regarding claims 20-21, McFarland device in an operational mode or assembly mode can be broadly interpreted as one integral piece and the interconnection which

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holds the spacer to the holder can also broadly interpret as a tongue and groove connection (at 26, 28).

Claims 1-2, 4-7 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 1,098,077 to Annison.

Annison discloses a locking bar and sheeting for construction work, comprising a plurality of sheeting and posts guards which can be used for guard hoses ©, each guard hose having an inner diameter, each guard hose of said plurality of guard hoses comprising an outwardly facing first contour and at least one spacer (b for example) positioned between two neighboring guard hoses of the plurality of guard hoses, the at least one spacer having two second opposite contours, each second contour matching one the first contour of the two neighboring guard hoses and wherein each of the second contours contacts a circumferential portion of a respective first contour to thereby partly encircle the respective first contour

Regarding claim 2, Annison also discloses a number of guard hoses, and a number of spacers arranged between neighboring guard hoses, and wherein each Of said spacers is positioned along a straight length of two neighboring guard hoses.

Regarding claim 4, least one spacer has first and second surfaces opposite each other, said first and second surfaces forming a first pair of surfaces and said at least one spacer further comprising third and fourth surfaces opposite each other and forming a second pair of surfaces, each surface of at least one pair of said first and second pair

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of surfaces having one of said two second opposite contours matching a circumferential portion of the first contour of a respective guard hose.

Regarding claim 5, the first contour (of c) is convex and wherein said two second opposite contours are concave.

Regarding claims 6 and 7, the subject matter of claims 6-7 also readable over Annison as evidently shown on Fig. 1-4 or 8,

Regarding claims 20-21, Annison device in an operational mode or assembly mode can broadly interpret as one integral piece and the interconnection, which holds the spacer to the holder, can interpret as a tongue and groove connection.

Response to Arguments

4. Applicant's arguments filed 7/21/05 have been fully considered but they are not persuasive.

Applicant has amended independent claim 1 and along with other dependent claims and pointed to alleged difference between prior art and his invention based upon amendment introduced into claims. However these claims still stand rejected as set forth in the office action.

Applicant's argument that the aircraft is no longer set forth as an example but as a positive element of claim 1. This is not found persuasive because: a) the preamble is an aircraft, however the aircraft in this case does not limit the claims. A preamble limits the invention if it recites essential structure or steps, or if it is "necessary to give life, meaning and vitality to the claims. Pitney Bowes, 182 F. 3d at 1305. However, in the

instant case, the preamble is not limiting because it does not “define or indicate a reliance on both the preamble and the claim body to define the claimed invention. A preamble generally is not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention” *IMS tech., Inc. V. Haas Automation, Inc.*, 206 F.3d 1422, 1434, 54 USPQ2d 1129, 1136-37 (Fed. Cir.2000).

Applicant argues that Applicant’s spacers do not fully encircle the guard hoses as opposed to McFarland’s spacers. The examiner respectfully submits that each of the opposite contours of the spacer of McFarland clearly contacts a circumferential portion of a respective first contour of the guard hose and partly encircle the respective first contour as claimed and as clearly shown on Fig 3. (See gap at 26 and 28).

With respect to the argument of claims 20-21 as present on page 23, the examiner also respectfully submits that “integral” is not necessarily restricted to one-piece article. See *In re Kohno*. (CCPA) 157 USPQ 275. Although the tongues and grooves are not structurally integral, but they are secure and hence they are integral in functional sense.

Examiner also disagrees with Applicant that Annison does not show a guard hoses as claimed. The C-channels of the locking bars of Annison (spacer) is not completely encircle the guard hoses and thus it can be considered as partly encircle the respective first contour as claimed.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
September 22, 2005



ANITA KING
PRIMARY EXAMINER